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Attorneys for Plaintiff JENS ERIK SORENSEN,
as Trustee of SORENSEN RESEARCH AND
DEVELOPMENT TRUST

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JENS ERIK SORENSEN, as Trustee of
SORENSEN RESEARCH AND
DEVELOPMENT TRUST,

Plaintiff

v.

LEXAR MEDIA, INC., a Delaware Corporation;
and DOES 1 – 100,

Defendants.

and related counterclaims.

) Case No. 08 CV 00095 JW

) **EVIDENTIARY OBJECTION TO**
) **DECLARATION OF DAVID ASHMORE IN**
) **SUPPORT OF DEFENDANT LEXAR**
) **MEDIA'S OPPOSITION TO PLAINTIFF'S**
) **MOTION FOR APPLICATION**
) **OF 35 U.S.C. § 295 PRESUMPTION OF**
) **INFRINGEMENT (DOCKET #36)**

) Date: June 30, 2008

) Time: 9:00 A.M.

) Courtroom 8, 4th Floor

) Judge: The Hon. James Ware

) *Oral Argument is Respectfully Requested at*
) *Hearing on This Matter*

1 Plaintiff Jens Erik Sorensen, as Trustee of Sorensen Research and
2 Development Trust ("Sorensen") makes the following evidentiary objections to
3 Document 36 in this case, captioned

4 "Declaration of David Ashmore in Support of Defendant Lexar Media's
5 Opposition to Plaintiff's Motion for Application of 35 U.S.C. § 295
6 Presumption of Infringement"
7 (hereinafter "Ashmore Declaration").

8 Plaintiff hereby requests that the Court strike all portions of the Ashmore
9 Declaration that are not admissible evidence under the Federal Rules of Evidence.
10 The rules referenced are set forth first for reference.

11 **Rule 401. Definition of "Relevant Evidence."** "Relevant evidence" means
12 evidence having any tendency to make the existence of any fact that is of
13 consequence to the determination of the action more probable or less
14 probable than it would be without the evidence.

15 **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence**
16 **Inadmissible.** All relevant evidence is admissible, . . . Evidence which is not
17 relevant is not admissible.

18 **Rule 602. Lack of Personal Knowledge.** A witness may not testify to a
19 matter unless evidence is introduced sufficient to support a finding that the
20 witness has personal knowledge of the matter. Evidence to prove personal
21 knowledge may, but need not, consist of the witness' own testimony. This
22 rule is subject to the provisions of [rule 703](#), relating to opinion testimony by
23 expert witnesses.

24 **Rule 802. Hearsay Rule.** Hearsay is not admissible except as provided
25 by these rules or by other rules prescribed by the Supreme Court
26 pursuant to statutory authority or by Act of Congress.
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Portion of Declaration	Evidentiary Objections
Entire declaration	<p><u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602, 801).</p> <p>The declaration was not made upon personal knowledge of Mr. Ashmore. Paragraph 1 specifically states “[m]y understanding is that the facts stated herein are true and correct . . .” thereby admitting that he does not have personal knowledge.</p> <p>The acknowledged absence of personal knowledge renders all of the details of the declaration hearsay.</p>
Paragraph 3	<p><u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602, 801).</p> <p>Mr. Ashmore was not party to any of the pre-suit discussions and thus has no personal knowledge, and is apparently trying to give a hearsay summary of something he read or spoke to others about.</p> <p>Furthermore, this statement is false. Lexar did nothing but have its attorneys make hearsay statements about what Lexar’s suppliers supposedly said.</p>
Paragraph 4	<p><u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602, 801).</p> <p>Mr. Ashmore was not party to any of the pre-suit discussions and thus has no personal knowledge, and is apparently trying to give a hearsay summary of something he read or spoke to others about.</p> <p>Furthermore, this statement is false. Sorensen made no admissions about manufacturing processes because its counsel was trying to obtain accurate, verified, and sufficiently complete information.</p>
Paragraph 5	<u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602,

1		801).
2		Mr. Ashmore was not party to any of the pre-suit discussions
3		and thus has no personal knowledge, and is apparently trying to
4		give a hearsay summary of something he read or spoke to others
5		about.
6		Furthermore, this statement is false. Sorensen never tied a
7		requested affidavit to overcoming a presumption of
8		infringement.
9	Paragraph 6	<u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602,
10		801).
11		Mr. Ashmore was not party to any of the pre-suit discussions
12		and thus has no personal knowledge, and is apparently trying to
13		give a hearsay summary of something he read or spoke to others
14		about.
15		Furthermore, this statement is false. Lexar explicitly did not
16		offer to provide Sorensen copies of supplier correspondence. It
17		offered to provide them to Sorensen's counsel if counsel agreed
18		to not allow Sorensen or its experts to see them (along with
19		other conditions).
20	Paragraph 7	<u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602,
21		801).
22		Mr. Ashmore was not party to any of the pre-suit discussions
23		and thus has no personal knowledge, and is apparently trying to
24		give a hearsay summary of something he read or spoke to others
25		about.
26		Furthermore, this statement is false. Lexar explicitly did not
27		offer to provide Sorensen copies of supplier correspondence. It
28		offered to provide them to Sorensen's counsel if counsel agreed
	Paragraph 8	<u>Lack of Personal Knowledge; Hearsay</u> (F.R.Evid. Rules 602,
		801).

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2 Mr. Ashmore was not party to any of the pre-suit discussions
3 and thus has no personal knowledge, and is apparently trying to
4 give a hearsay summary of something he read or spoke to others
5 about.

6
7 DATED this Monday, June 16, 2008.

8 JENS ERIK SORENSEN, as Trustee of
9 SORENSEN RESEARCH AND DEVELOPMENT
10 TRUST, Plaintiff

11 /s/ J. Michael Kaler

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J. Michael Kaler, Esq.
13 Melody A. Kramer, Esq.
14 Attorney for Plaintiff
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